

Internal Revenue Service

**memorandum**

CC:TL:TS  
PHECK

date: AUG 12 1987

to: District Counsel, San Francisco W:SF

from: Director, Tax Litigation Division CC:TL

subject: Effect of Form 870-P  
[REDACTED]

This memorandum is in response to your request of June 4, 1987, for technical advice with regard to the effect of a Form 870-P, Settlement Agreement for Partnership Adjustments, on the above-referenced case.

ISSUE

Whether a taxpayer's signature and the Service's execution of a Form 870-P for a full concession of the partnership adjustment precludes the taxpayer from accepting a subsequently negotiated settlement.

CONCLUSION

A properly executed Form 870-P is a binding contract that may not be rescinded absent fraud, malfeasance, or misrepresentation of fact. Although I.R.C. § 6224(c)(2) provides that if the Service enters into a settlement agreement with any partner with respect to partnership items for any taxable year, other partners have the right to enter into consistent agreements, a taxpayer who executes a Form 870-P is removed from the TEFRA proceedings and precluded from accepting a later settlement. Furthermore, the taxpayers in the instant case could not have been misled into executing the Form 870-P since the San Francisco Appeal settlement proposal was not developed until after the settlement agreement was signed.

FACTS

[REDACTED] were sent the standard 60-day letter accompanied by Form 870-P (Settlement Agreement for Partnership Adjustments) in the Spring [REDACTED]. The 60-day letter provided the [REDACTED] with the Service's proposed adjustments relating to [REDACTED] a TEFRA partnership. On [REDACTED], the [REDACTED] executed the Form 870-P and mailed it to the Ogden Service Center. On [REDACTED], the Chief, Classification Section,

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accepted the Form 870-P on behalf of the Commissioner. As a result of the executed Form 870-P, the Ogden Service Center made the assessment in income tax against the [REDACTED] based upon the full disallowance of their claimed partnership loss.

After the assessment of the underlying tax, the Ogden Service Center issued the [REDACTED] a notice of deficiency asserting additions to tax under I.R.C. § 6653(a)(1) and (a)(2) and additional interest under section 6621(c). On [REDACTED], the [REDACTED] petitioned the Tax Court. An answer was filed on or about [REDACTED].

The [REDACTED] partnership is under the jurisdiction of the San Francisco Appeals Office. It appears that subsequent to the issuance of the 60-day letter and the execution of the Form 870-P, the Appeals Officer and the tax matters partner (TMP) for [REDACTED] negotiated a discounted out-of-pocket settlement with no additions to tax. In the petition, the [REDACTED] allege that the Form 870-P was misleading and invalid and that the additions to tax asserted in the deficiency notice are still "partnership items" and thus the notice is barred by section 6225.

#### DISCUSSION

As a general matter, the 60-day letters issued in TEFRA partnership cases are comparable to the "30-day letters" that normally precede a statutory notice of deficiency. Like said 30-day letters, the 60-day letter provides the taxpayer with the Service's proposed adjustments. The letter emphasizes the preliminary nature of the Service's proposal and the importance of the availability of an administrative appeal. The 60-day letter advises the taxpayer that a hearing may be requested with the Appeals Office or that an enclosed settlement agreement may be executed if the proposed adjustments are acceptable.

The settlement agreement for partnership adjustments (Form 870-P) is the equivalent of the Form 870 which accompanies the 30-day letter. The effect of the execution of both documents is to administratively dispose of cases at the Examination Division level and to permit the immediate assessment and collection of the additional tax. Further, under the provisions of I.R.C. § 6231(b)(1)(C), the execution of the Form 870-P "settlement agreement" removes the taxpayer from the TEFRA administrative audit proceeding. The term "settlement agreement" is used in the Form 870-P in conformance with the statutory provisions of TEFRA.

We agree generally with your comments with respect to Form 870-P that there is a potential for confusion and misunderstanding on the part of some taxpayers. Discussions are currently taking place with the Examination Division in an


effort to alleviate some of this confusion. Steps may be taken to modify the 60-day letter and Form 870-P to avoid the problems being encountered by some taxpayers. However, it is our position that a properly executed Form 870-P is a binding agreement on both parties and the validity of said document should be litigated if necessary.

With regard to the [REDACTED], the Form 870-P executed on [REDACTED] and accepted by the Service on [REDACTED], is a valid and binding agreement which removes them from the TEFRA administrative audit proceeding. As such, the [REDACTED] are not afforded the right to consistent settlement treatment mandated by section 6224(b)(2). Further, the settlement position reached by the San Francisco Appeals Office and the TMP was developed subsequent to the [REDACTED] execution of the Form 870-P and, therefore, could not have misled them into conceding their tax controversy.

While the [REDACTED] are not entitled to the Appeals settlement offer, it is within the discretion of district counsel to dispose of the penalty case on a hazards of litigation basis. It may be advisable to resolve the penalty case in conformance with the Appeals settlement position with respect to the various additions to tax.

If you have any questions regarding this matter, please contact Patrick G. Heck on FTS 566-4174.

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